

article and the extent, if any, to which a credit may be allowed, or refund made, of the tax paid by the manufacturer, producer, or importer on the sale of the first article.

(c) *Readjustments in sale price.* Readjustment in sale price (such as allowable discounts, rebates, bonuses, etc.) cannot be anticipated. The tax must be based upon the original price unless the readjustments have actually been made prior to the close of the period for which the tax upon the sale is returned. However, if the price upon which the tax was computed is subsequently readjusted, credit may be taken against the tax due on a subsequent return or a claim for refund filed as provided by section 6416(b)(1) of the Code and §§ 53.174–53.176.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-344, 58 FR 40354, July 28, 1993]

§ 53.94 Constructive sale price; scope and application.

(a) *In general.* Section 4216(b) of the Code pertains to those taxes imposed under chapter 32 of the Code that are based on the price for which an article is sold, and contains the provisions for constructing a tax base other than the actual sale price of the article, under certain defined conditions.

(b) *Specific applications.* (1) Section 4216(b)(1) of the Code applies to:

(i) Arm's-length sales at retail or on consignment, other than those sales at retail and to retailers to which section 4216(b)(2) of the Code and § 53.96 apply; and

(ii) Sales otherwise than at arm's length, and at less than fair market price.

(2) Section 4216(b)(2) of the Code applies generally to arm's-length sales of an article at retail or to retailers, or both, where the manufacturer also sells the same article to wholesale distributors.

(3) Section 4216(b)(3) of the Code provides a formula for determining a constructive sale price for sales of taxable articles between members of an affiliated group of corporations (as "affiliated group" is defined in section 1504(a) of the Code) in those instances where the purchasing corporation regularly resells to retailers but does not regu-

larly resell to wholesale distributors, and except for situations where section 4216(b)(4) of the Code applies.

(4) Section 4216(b)(4) of the Code provides a special method for computing a constructive sale price for sales of taxable articles between affiliated corporations where the purchasing corporation sells only to retailers, and the normal method of selling within the industry is for manufacturers to sell to wholesale distributors.

(c) *Definitions.* For purposes of section 4216(b) of the Code and §§ 53.94–53.97 and unless otherwise indicated:

(1) *Sale at retail.* A "sale at retail," or a "retail sale", is a sale of an article to a purchaser who intends to use or lease the article rather than resell it. The fact that articles are sold in wholesale lots, or at wholesale prices, will not change the character of such sales as "sales at retail" if the purchaser is not engaged in the business of reselling such articles, and acquires them for the purpose of using them rather than reselling them.

(2) *Retail dealers.* A "retail dealer", or "retailer", is a person engaged in the business of selling articles at retail.

(3) *Wholesale distributor.* The term "wholesale distributor" means a person engaged in the business of selling articles to persons engaged in the business of reselling such articles.

§ 53.95 Constructive sale price; basic rules.

(a) *In general.* Section 4216(b)(1) of the Code sets forth the conditions that require the Secretary to construct a sale price on which to compute a tax imposed under chapter 32 of the Code on the price for which an article is sold. The section requires a constructive sale price to be established where a taxable article is:

- (1) Sold at retail;
- (2) Sold while on consignment; or,
- (3) Sold otherwise than through an arm's-length transaction at less than fair market price.

(b) *Sales at retail.* Section 4216(b)(1)(A) of the Code relates to the determination of a constructive sale price for sales of taxable articles sold at arm's-length and at retail. In the case of such sales, the constructive sale price is the highest price for which such articles